

Telecommunications  
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Proprietary Rights  
Complex Litigation  
General Business Law

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TN REGULATORY AUTHORITY  
TELECOMMUNICATIONS DIVISION

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January 22, 2004

## Via First Class Mail

David Foster, Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

RE: Touch America, Inc.  
*Notice of Intention to Cease Business and Request to Cancel  
Certificate of Authority and Withdraw Tariffs*

Dear Mr. Foster:

Touch America, Inc. (Debtor-in-Possession) ("Touch America"), through its attorneys, hereby provides notice to the Tennessee Regulatory Authority ("Commission") of its intention to cease conducting business on February 28, 2004

As of February 28, 2004, Touch America will not have any Tennessee customers subscribed to any of its intrastate, regulated telecommunications services. Details regarding the disposition of Touch America's Tennessee customers over the past twelve months, by reason other than attrition, are provided herein

By this letter, Touch America respectfully requests the Commission cancel all state telecommunications licenses issued to the company and cancel and withdraw the company's tariffs, if applicable, on February 28, 2004 or as soon thereafter as possible.

## Background

Touch America is a Montana corporation headquartered in Butte, Montana. Touch America is authorized to provide a variety of intrastate, interexchange telecommunications services in Tennessee by virtue of authority granted March 22, 2001 in Docket No. 00-00984.

On June 19, 2003, Touch America Holdings, Inc. and certain of its subsidiaries, including Touch America, filed voluntary petitions pursuant to Chapter 11 of the U S Bankruptcy Code to reorganize their business and financial structure. *See* Chapter 11 Case No. 03-11915-MFW et al. (Bankr D. Del.).

Throughout its existence, Touch America provided a variety of regulated and non-regulated services to customers throughout the United States, including switched and dedicated voice long distance, dedicated data private lines, ATM/Frame Relay, and other enhanced data and video services

Touch America shifted its business focus away from voice communications in late 2002. Therefore, in late 2002 and again several months later, Touch America sold the vast majority of its switched and dedicated voice customer bases to Buyers United, Inc., d/b/a buyersonline, d/b/a United Carrier Networks ("Buyers United"), a licensed long distance provider, in two separate, but related transactions ("Buyers United Transactions"). Additional details regarding the Buyers United Transactions and the impact these transactions had on Touch America's Tennessee customers, if any, are provided below.

Since filing for Chapter 11 bankruptcy protection in June 2003, Touch America has entered into agreements with qualified carriers to sell its dedicated data private line customers and other assets required to provide services to its remaining ATM/Frame Relay customers. These transactions ensure that customers obtain service following Touch America's dissolution. Details of these transactions and their impact on Touch America's Tennessee customers, if any, are provided below.

To the extent customers previously taking regulated, intrastate telecommunications services from Touch America were not transferred to another qualified carrier or carriers, any remaining customers either voluntarily disconnected service or otherwise ceased taking services from Touch America.

## Disposition of Customers

As of February 28, 2004, Touch America will not have any Tennessee customers either subscribed to the company's regulated, intrastate telecommunications services or obtaining services over Touch America's network. All Tennessee customers previously subscribed to Touch America's network for intrastate regulated services have already transferred their accounts to alternate

service providers or have otherwise voluntarily terminated service with Touch America.

In Tennessee, customers of each of the following categories of service were transitioned off of Touch America's network, as follows:

*Switched & Dedicated Interstate and Intrastate Voice Long Distance*

Transaction -

Customers of these voice services were acquired by Buyers United in two separate, but related transactions. Customers who were not acquired by Buyers United either transferred service to an alternate provider of their choosing or otherwise elected to terminate services with Touch America.

How Transaction affected Tennessee -

Details of the Buyers United Transaction are set forth in the January 28, 2003 notification letter filed by Buyers United.

Currently, Touch America has no intrastate or interstate switched or dedicated voice long distance customers subscribed to its services.

*Dedicated Data Private Line*

Transaction -

Customers of Touch America's dedicated data private line services and certain other non-regulated services, such as dial-up Internet, were acquired by 360networks(USA) inc. on December 24, 2003, as a result of a transaction approved by the bankruptcy court and the Federal Communications Commission ("360 Transaction") See *Domestic Section 214 Application Filed for Acquisition of Assets of Touch America, Inc by 360networks (USA) Inc.*, WC Docket No. 03-227 (Approved by FCC on December 11, 2003).

How transaction affected Tennessee -

Touch America had neither dedicated data private line customers nor customers of other regulated services subject to the 360 Transaction in Tennessee.

*ATM/Frame Relay*

On December 8, 2003, Touch America filed an application for discontinuance of its ATM and Frame Relay services, pursuant to Section 63.71 of the FCC's rules, 47 C.F.R §63.71 See *Application of Touch America, Inc (Debtor-in-Possession) to Discontinue Domestic Telecommunications Services*, WC Docket No. 03-259. As required by FCC rules, Touch America provided a copy of its 214 Discontinuance filing to the public service commissions and Governor's offices in each state where a customer location might be affected by the proposed discontinuance. Touch America also provided direct mail notice to each affected customer.

Touch America's ATM/Frame Relay services are wholly interstate in nature. Therefore, Touch America's ATM/Frame Relay services are not subject to state jurisdiction. Rather, such wholly interstate services are subject to the exclusive jurisdiction of the FCC and the Section 214 discontinuance processes established by the federal Communications Act. *See* 47 U.S.C. §214.

Nevertheless, Touch America understands the concerns a state Commission might have regarding the effect of the proposed discontinuance on commercial customers with locations in their state. To allay these concerns, Touch America provides the following information.

Through the Section 214 process, customers of Touch America's interstate ATM/Frame Relay services who are affected by the proposed discontinuance of services have been given the opportunity to seek additional time to transfer service to an alternate carrier(s). For customers seeking additional time, Touch America has committed to ensure continuity of service until February 28, 2004. Ultimately, ATM/Frame Relay services will not be discontinued without the express authority of the FCC.

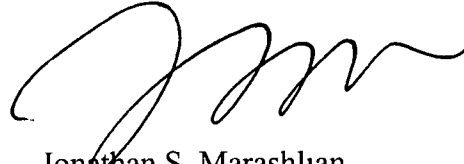
#### Conclusion

Touch America appreciates the opportunity it has had to serve Tennessee customers and is deeply disappointed that it could not continue as the service provider to these customers due to the financial and other circumstances resulting in its Chapter 11 bankruptcy. In the months leading up to and during its bankruptcy, Touch America has taken every effort to ensure that its customers are treated fairly and responsibly. Touch America has worked diligently to ensure that customers who elect to be are transitioned to qualified carriers. As of February 28, 2004, Touch America will have no customers taking regulated, intrastate services in Tennessee. Wherefore, for the reasons set forth above, Touch America requests the cancellation of its Certificate of Authority and cancellation and withdrawal of its tariffs on file with the Commission.

An additional copy of this filing is enclosed. Please date stamp and return in the self-addressed, postage pre-paid envelope.

Should you have questions regarding this filing, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Marashlian', written over a horizontal line.

Jonathan S. Marashlian  
Regulatory Counsel

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cc Michael J. Meldahl, President  
Touch America, Inc.


**AFFIDAVIT**

STATE OF MONTANA )

COUNTY OF SILVER BOW )

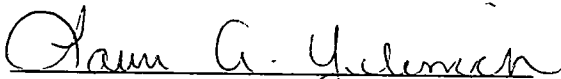
**AFFIDAVIT OF MICHAEL J. MELDAHL**

I, Michael J Meldahl, being of lawful age and duly sworn upon my oath, depose and state I am President of Touch America, Inc (Debtor-in-Possession) ("Touch America"), I am duly authorized to make these statements on behalf of Touch America, the information contained in the foregoing filing is true and correct to the best of my knowledge, information and belief.

  
Michael J Meldahl, President  
Touch America, Inc

Subscribed and sworn to before me this 26<sup>th</sup> day of January, 2004.

NOTARY PUBLIC

  
Laurie A. Yelenich

NOTARY PUBLIC for the State of Montana  
Residing at Butte, Montana  
My Commission Expires 9/1/2004

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

March 22, 2001

IN RE:

Application of Touch America, Inc. for Certificate of  
Convenience and Necessity to Provide Facilities  
Based and Resold Interexchange  
Telecommunications Services in Tennessee

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DOCKET NO. 00-00984

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INITIAL ORDER GRANTING CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY

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This matter came before the Tennessee Regulatory Authority ("Authority"), upon the application of Touch America, Inc. ("Applicant") for certificate of convenience and necessity to provide facilities based and resold interexchange telecommunications services in Tennessee (the "Application") filed on October 30, 2000. The Application was made pursuant to Tenn. Code Ann. § 65-4-201 *et seq*. A Hearing on the Application was held before K. David Waddell, acting as Hearing Officer, on March 21, 2001.

LEGAL STANDARD FOR GRANTING CCN

The Application was considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in applicable statutes. Tenn. Code Ann. § 65-4-201 provides, in part

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility,

or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

\* \* \*

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

An authority order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a competing telecommunications service provider shall be entered no more than sixty (60) days from the filing of the application.

In addition, pursuant to Tenn. Code Ann. § 65-5-212, competing telecommunications providers are required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

#### INTERVENORS

Public notice of the hearing in this matter was made by the Authority's Executive Secretary, pursuant to Tenn. Code Ann. § 65-4-204. No interested persons sought intervention prior to or during the hearing.

#### APPLICANT'S HEARING

The Application was uncontested. At the hearing held on March 21, 2001, Ms. Becky Berger, Tariff Administrator, Touch America, Inc. P.O. Box 5329, 1315 North Main, Helena, Montana, 59604, represented the Applicant. In addition, Ms. Berger, presented testimony and was subject to examination by the Hearing Officer. Upon Applicant's conclusion of the proof in



its case, the Hearing Officer recommended approval of the Application based upon the following findings of fact and conclusions of law:

**I. APPLICANT'S QUALIFICATIONS**

1. The Applicant is a corporation organized under the laws of the State of Montana.
2. The complete street address of the Applicant's principal place of business is 130 East Main Street, Butte, Montana 59701. The phone number is (303) 992-1400
3. The Application and supporting documentary information existing in the record indicate that the Applicant has the requisite technical and managerial ability necessary to provide telecommunications services within the State of Tennessee. Specifically, the Applicant's management and technical teams have extensive expertise in the telecommunications industry. The Applicant has authority to provide local exchange services pending in Alabama, Arkansas, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, Wisconsin and Wyoming.
4. The Applicant has the necessary capital and financial capability to provide the services it proposes to offer.
5. The Applicant has represented that it will adhere to all applicable policies, rules and orders of the Authority.

**II. PROPOSED SERVICES**

The Applicant intends to provide facilities-based and resold interexchange telecommunications services in of Tennessee.

**III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY**

Upon a review of the Application and the record in this matter, the Hearing Officer finds that approval of the Application would inure to the benefit of the present and future public

convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient technologically advanced statewide system of telecommunications services.

#### **IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM**

1. The Applicant has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

2. The Applicant has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

#### **IT IS THEREFORE ORDERED THAT:**

1 Touch America, Inc.'s application is approved;

2. The Applicant shall file a report with the Authority two years after the date of this order, if the Applicant has not yet offered service in Tennessee. Such report shall detail the reasons for the lack of service and any future plans for providing telecommunications services in Tennessee.

3. Any party aggrieved by this initial decision may file a Petition for Reconsideration with the Tennessee Regulatory Authority within fifteen (15) days from and after the date of this Order. Such Petition shall be considered by the Hearing Officer presiding herein;

4. Any party aggrieved by the decision of the Hearing Officer in this matter may also file a Petition for appeal pursuant to Tenn. Code Ann. § 4-5-315 with the Tennessee Regulatory Authority within fifteen (15) days from and after the date of the Order. If the Tennessee Regulatory Authority or any of the parties herein do not seek review of this Initial

Order within the time prescribed by Tenn. Code Ann § 4-5-315, this Order shall become the Final Order.

ENTERED THIS 22nd DAY OF March, 2001.

A handwritten signature in black ink, appearing to read "K. David Waddell", is written over a horizontal line.

K. DAVID WADDELL,  
AS HEARING OFFICER

